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8

9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
11

12  
13 **NATIONAL INSTITUTE OF  
FAMILY AND LIFE ADVOCATES  
14 dba NIFLA, a Virginia corporation;  
PREGNANCY CARE CENTER dba  
15 PREGNANCY CARE CLINIC, a  
California corporation; and  
16 FALLBROOK PREGNANCY  
RESOURCE CENTER, a California  
17 corporation,**

18 Plaintiffs,

19 v.

20 **XAVIER BECERRA, in his official  
capacity as Attorney General of the  
21 State of California; THOMAS  
MONTGOMERY, in his official  
22 capacity as County Counsel for San  
Diego County; MORGAN FOLEY, in  
23 his official capacity as City Attorney  
for the City of El Cajon, CA; and  
24 EDMUND G. BROWN, JR., in his  
25 official capacity as Governor of the  
State of California,**

26 Defendants.  
27  
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3:15-cv-02277-JAH-DHB

**STIPULATION -- AND JOINT  
REQUEST FOR COURT ORDER  
-- REGARDING THE PARTIES'  
SETTLEMENT OF PLAINTIFFS'  
CLAIMS FOR ATTORNEYS'  
FEES AND COSTS**

Judge: Hon. John A. Houston  
Trial Date: N/A  
Case Filed: Oct. 13, 2015

1 Plaintiffs National Institute of Family and Life Advocates, Pregnancy Care  
2 Center, and Fallbrook Pregnancy Resource Center, on one hand, and Defendant  
3 Xavier Becerra, Attorney General of the State of California, sued in his official  
4 capacity, on the other hand, agree and stipulate as follows:

### 5 **BACKGROUND**

6 A. On October 13, 2015, Plaintiffs filed the complaint in this lawsuit.

7 B. On October 21, 2015, Plaintiffs moved this Court for a preliminary  
8 injunction against enforcement of the Reproductive FACT Act, California Health  
9 and Safety Code section 123470, et seq. (the "Act"). On November 13, 2015,  
10 Defendant filed opposition to the motion. (Other defendants also filed their own  
11 oppositions to the motion.) On November 20, 2015, Plaintiffs filed a reply in  
12 support of the motion. On January 28, 2016, the Court held an oral argument of the  
13 motion. On February 9, 2016, the Court issued a ruling denying the motion.

14 C. On February 18, 2016, Plaintiffs filed in the U.S. Court of Appeals, Ninth  
15 Circuit, a notice of appeal of this Court's ruling denying the motion for a  
16 preliminary injunction. On March 17, 2016, Plaintiffs filed their opening brief on  
17 the appeal. On April 14, 2016, Defendant filed an answering brief. On April 28,  
18 2016, Plaintiffs filed their reply brief. On June 14, 2016, the Ninth Circuit held an  
19 oral argument of the appeal. On October 14, 2016, the Ninth Circuit issued a ruling  
20 affirming this Court's ruling.

21 D. On March 20, 2017, Plaintiffs filed in the U.S. Supreme Court a petition  
22 for a writ of certiorari regarding the Ninth Circuit's ruling that affirmed this Court's  
23 ruling denying Plaintiffs' motion for a preliminary injunction. On May 24, 2017,  
24 Defendant filed an opposition brief. On June 5, 2017, Plaintiffs filed a reply brief.  
25 On November 13, 2017, the Supreme Court granted the petition for a writ of  
26 certiorari.

27 E. On January 8, 2018, Plaintiffs filed in the Supreme Court the opening  
28 merits brief of the appeal, regarding the Ninth Circuit's ruling that affirmed this

1 Court's ruling denying Plaintiffs' motion for a preliminary injunction. On February  
 2 20, 2018, Defendant filed an opposition brief. On March 13, 2018, Plaintiffs filed a  
 3 reply brief. On March 20, 2018, the Supreme Court held an oral argument of the  
 4 appeal. On June 26, 2018, the Supreme Court issued an order reversing the Ninth  
 5 Circuit's ruling and remanding to the Ninth Circuit.

6 F. On August 28, 2018, the Ninth Circuit reversed in part and vacated in  
 7 part its October 14, 2016, ruling that affirmed this Court's ruling denying Plaintiffs'  
 8 motion for a preliminary injunction, and remanded to this Court.

9 G. On October 26, 2018, Plaintiffs and Defendant submitted to this Court a  
 10 stipulation for Defendant to be permanently enjoined from enforcing the Act, and  
 11 for other relief for Plaintiffs. On that same day, the Court entered an order  
 12 permanently enjoining Defendant from enforcing the Act, and granting other relief  
 13 to Plaintiffs.

#### 14 **RESOLUTION OF ISSUE OF ATTORNEY FEES AND COSTS**

15 1. Plaintiffs and Defendant have reached an agreement regarding attorneys'  
 16 fees and costs, as follows, and therefore jointly request that the Court enter the  
 17 attached proposed order, which is necessary to effectuate the settlement:

18 2. Defendant has had an adequate opportunity to inspect the billing records,  
 19 cost invoices, and qualifications of Plaintiffs' counsel, and Defendant agrees with  
 20 Plaintiffs that the sum of \$958,535.80, without interest, is a reasonable recovery for  
 21 Plaintiffs' attorneys' fees and costs in this matter.

22 3. Defendant shall pay to Plaintiffs the sum of \$958,535.80, as and for  
 23 reasonable attorneys' fees and costs in this matter (hereinafter the "Settlement  
 24 Sum"), via warrant payable to "Alliance Defending Freedom."

25 4. To obtain funds in the amount of the Settlement Sum to pay same,  
 26 Defendant shall take all necessary and reasonable measures to ensure that the  
 27 Settlement Sum is listed on the next claims bill ("Claims Bill"), for California  
 28 Department of Justice claims, submitted in the California Legislature, said

1 measures including seeking California Department of Finance approval of the  
2 Settlement Sum for inclusion on a Claims Bill within 14 business days of entry of  
3 this Court's order reflecting this settlement agreement. Defendant agrees to keep  
4 Plaintiffs apprised of the Claims Bill's progress, and to act in good faith to facilitate  
5 the Claim Bill's enactment as soon as practicable.

6 5. The submission of the Settlement Sum in the Claims Bill cannot be made  
7 without an order of this Court requiring Defendant to pay the Settlement Sum.

8 6. Defendant shall seek issuance of a warrant from the California State  
9 Controller to pay the Settlement Sum on or before the date 14 business days after  
10 the enactment by the California Legislature and the signing into law by the  
11 California Governor of the Claims Bill.

12 7. As soon after the issuance of the warrant as reasonably possible, because  
13 the warrant will be sent from the California State Controller first to the California  
14 Department of Justice for further processing, the Settlement Sum shall be sent to  
15 the Arizona office of the undersigned counsel for Plaintiffs, at 15100 North 90th  
16 St., Scottsdale, AZ 85260, via a trackable mail service, such as U.S. Postal Service  
17 Priority Mail. Promptly upon dispatch, Defendant shall confirm the mailing of the  
18 warrant in writing to Plaintiffs' counsel, and shall provide the tracking information  
19 to Plaintiffs' counsel.

20 8. If the Settlement Sum is sent to counsel for Plaintiffs on or before  
21 September 6, 2019, Plaintiffs' receipt and successful negotiation of the warrant for  
22 the Settlement Sum will completely satisfy Defendant's obligation to pay attorneys'  
23 fees and costs in this matter (provided that if, after the warrant is mailed by  
24 Defendant, Plaintiffs notify Defendant in writing that the warrant was not received  
25 by Plaintiffs, then Defendant shall move expeditiously to have a replacement  
26 warrant prepared and sent to Plaintiffs as per paragraph 7, above).

27 9. If for any reason whatsoever (including failure of the California  
28 Legislature to enact the Claims Bill) Defendant fails to send the Settlement Sum to

1 the Arizona office of the undersigned counsel for Plaintiffs by September 6, 2019,  
2 then Plaintiffs shall be entitled to a Consent Judgment against Defendant for the  
3 sum of \$958,535.80. Plaintiffs and Defendant shall jointly submit such a Consent  
4 Judgment to the Court on or before September 20, 2019.

5 10. If any additional litigation becomes necessary to enforce the terms of this  
6 settlement agreement, the prevailing party shall be entitled to recover reasonable  
7 attorney's fees, costs, and interest.

8 11. This settlement agreement contains the entire agreement between the  
9 Plaintiffs and Defendant.

10 Dated: March 6, 2019

Respectfully submitted,

11 XAVIER BECERRA  
12 Attorney General of California  
13 STEPAN A. HAYTAYAN  
Supervising Deputy Attorney General

14 s/ Jonathan M. Eisenberg

15 JONATHAN M. EISENBERG  
16 Deputy Attorney General  
17 *Attorneys for Defendant Xavier*  
*Becerra, Attorney General of the*  
*State of California*

18  
19 Dated: March 6, 2019

Respectfully submitted,

20 ALLIANCE DEFENDING FREEDOM

21 s/ Kevin H. Theriot

22 KEVIN H. THERIOT  
23 *Attorneys for Plaintiffs National*  
24 *Institute of Family and Life*  
25 *Advocates, Pregnancy Care Center,*  
26 *and Fallbrook Pregnancy Resource*  
27 *Center*  
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